

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESAL PRICE)	MDL No.1456
LITIGATION)	
_____)	Civil Action No. 01-12257-PBS
THIS DOCUMENT RELATES TO:)	
)	Subcategory Docket: 06-CV-11337-PBS
<i>United States of America, ex rel.</i>)	
<i>Ven-A-Care of the Florida Keys, Inc. v.</i>)	Hon. Patti B. Saris
<i>Dey, Inc., et al., Civil Action No.</i>)	
05-11084-PBS)	

**UNITED STATES' MOTION TO EXCLUDE
CERTAIN EVIDENCE OF "GOVERNMENT KNOWLEDGE"**

The United States of America, through its undersigned counsel, hereby moves to exclude evidence of "government knowledge," as it is irrelevant to any element or defense under the False Claims Act. The specific evidence sought to be excluded includes testimony of various government officials' understanding of what Average Wholesale Prices (AWPs) represented, and testimony, reports and other documents demonstrating the federal government's growing awareness that many reported AWPs exceeded market prices. As explained in more detail in the accompanying memorandum of law, this evidence is not relevant to any issue properly before the jury, including whether Dey's reported AWPs were false, whether they caused false claims to be submitted and whether Dey acted knowingly.

TONY WEST
ASSISTANT ATTORNEY GENERAL

Joyce R. Branda
Daniel R. Anderson
Laurie A. Oberembt
Civil Division
Commercial Litigation Branch
P. O. Box 261
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3345

FOR THE RELATOR,

James J. Breen
The Breen Law Firm, P.A.
5755 Northpoint Parkway, Suite 260
Alpharetta, GA 30022
Tel. (770) 740-000

Respectfully submitted,

CARMEN M. ORTIZ
UNITED STATES ATTORNEY

By: /s/ George B. Henderson, II
George B. Henderson, II
Barbara Healy Smith
James J. Fauci
Assistant U.S. Attorneys
United States Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3272

Gary Azorsky, Esq.
Susan Schneider Thomas, Esq.
Berger & Montague, P.C.
1622 Locust St.
Philadelphia, PA 19103
(215) 875-3090

CERTIFICATION

The undersigned certifies that counsel for the United States and for Dey have conferred pursuant to LR 7.1(A)(2), in a good faith attempt to resolve or narrow the issues addressed in this motion.

/s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above document to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: June 10, 2010

/s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney